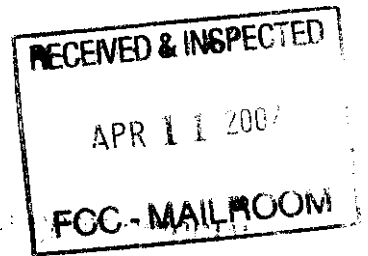


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Schools and Libraries Universal Service)	DA-07-1263
Support Mechanism)	
)	
Petition for Review)	
American Cyber Corp)	
)	
Petition for Review)	
Coleman Enterprises, Inc.)	
)	
Petition for Review)	
Inmark, Inc.. d/b/a Preferred Billing)	
)	
Petition for Review)	
Lotel, Inc., d/b/a Coordinated Billing)	
)	
Petition for Review)	
Protel Advantage)	
)	
)	
to The Commission)	

REQUEST FOR STAY

**JOINT FILING BY AMERICAN CYBER CORP., COLEMAN ENTERPRISES, INC.,
INMARK, INC. D/B/A PREFERRED BILLING, LOTEL, INC.
D/B/A COORDINATED BILLING, PROTEL ADVANTAGE, INC.**

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I INTRODUCTION

Each of the live carriers submitting this Request for Stay (referred to herein as “Applicants” or “carriers”) filed a separate Petition for Review (referred to herein as the “Petitions”) with the Federal Communications Commission for review of actions of the Universal Service Administrative Company (sometimes referred to herein as “USAC”). The Petitions have been decided by the Wireline Competition Bureau under delegated authority. The Petitions noted, in footnote 1 of each, that the issues were similar or virtually identical for each carrier. Although there does not appear to have been a formal consolidation of the five proceedings, all were decided in a single Order (the “Order”) released March 12, 2007 in proceeding DA-07-1263. A joint Application for Review has been filed with the Commission. The carriers jointly request a stay of collection proceedings pending further Order by the Commission and pending judicial review, pursuant to 47 CFR §1.102(b)(3). Applicants respectfully request the Commission to stay the collection of the disputed amounts totaling approximately \$1,400,000 billed by USAC, pending further Order of the Commission and, if necessary, judicial review.

II SUMMARY AND DISCUSSION

In determining whether to stay the effectiveness of one of its orders, the Commission applies the four factor test established in *Virginia Petroleum Jobbers Association v. FPC*,¹ as modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*² Under this test, a petitioner must demonstrate that: (1) it will suffer irreparable harm in the absence of a stay (2) it is likely to prevail on the merits of its petition for review; (3) a stay will not injure other parties; and (4) a stay is in the public interest.

¹ *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).
Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

Each Applicant is a relatively small carrier being billed by USAC for a significant sum (collectively approximately \$1,400,000) based on billings the carrier never made and revenues it never received, payment of which would seriously impair the ability of each Applicant to continue in business, causing each Applicant irreparable harm. Because these billings are based on unauthorized attribution of revenues to Applicants by USAC, exceeding any authority granted by the Commission, and for other reasons explained herein and in the Application for Review, Applicants are likely to prevail on the merits. No injury to other parties will result from a stay. The public interest is served by permitting Applicants to continue operating as competitors in the telecommunications market pending resolution of their Application.

The Petitions and this Application involve issues concerning Applicants' 2001 499-A forms, which were timely filed by each Applicant but which were rejected by USAC. USAC also attributed to the Applicants calendar year 2000 revenues determined by USAC, replacing the revenues reported by Applicants and resulting in substantial universal service contribution billings to each Applicant.

In the Petitions, the Applicants showed that each had entered into an agreement (Exhibit C to Petitions) with QAI, Inc., ("QAI") a Minnesota corporation. (In the case of Inmark, Inc. and American Cyber Corp. a virtually identical agreement was made with QAI affiliate Pathfinder Capital, Inc., a Nevada corporation. References herein to QAI are intended to include Pathfinder Capital, Inc. in regard to Inmark, Inc. and American Cyber Corp.).

Under the terms of each agreement (particularly Schedule 2 of each Agreement) QAI was to act as the wholesaler of telecommunications services and Applicants were retail carriers, with a crucial variation from the more common business model. Each agreement provided that QAI Inc would directly bill end-user customers for "Long Distance usage provided by QAI", QAI

would receive all funds in payment for same and QAI, as recipient of all monies, would remit universal service fund payments to the Universal Service Administrative Company. In addition to the agreements themselves this was confirmed in Exhibit E to the Petitions, in which QAI acknowledged that as billing party and recipient of all monies, it would pay universal service contributions.

This contractual arrangement is less common than the more generally followed structure of a retail carrier directly billing for and collecting long distance usage charges and remitting universal service fund payments. However, nothing in the applicable regulations or Instructions for universal service reporting and contributions prohibits parties from establishing and following the procedure adopted by the Applicants and QAI.

In the case before the Commission, the procedure followed by the parties is also perfectly logical in that the wholesaler, QAI, was the carrier that billed and received all funds; not just universal service fund charges passed through to retail customers but all revenues from billings to retail customers. QAI by agreement remitted to the retail carrier only the funds remaining (if any) after payment of underlying carrier costs, universal service fund payments and other applicable charges.

Under this arrangement it made perfect sense for the parties to agree that QAI, as holder of the funds, would remit universal service contributions. Indeed, the Commission has observed that in most common wholesaler-retailer relationships, the reseller should generally bear the obligation to make universal service payments because it bills for and receives revenues directly from the end users. Universal Service First Report and Order, 12 FCC Rcd 8776, part XIII F, "Basis For Assessing Contributions;". The Commission noted that in common arrangements, passing through universal service obligations to resellers avoids problems of double payments. It

also avoids the very practical problem of looking to the carrier that does not receive money for payment of universal service contributions. Likewise, if the wholesaler bills for and receives all revenues, it alone should report end user revenues and pay resulting universal service contributions. Instead of transferring billing and reporting obligations to Applicants, confirmed by a writing from each Applicant to QAI as described in the Instructions, QAI and the Applicants expressly contracted for QAI to bill and report revenues and pay universal service contributions.

This approach is supported by the relevant 499 Instructions, (Exhibit D to Petitions) which clearly provide that a wholesaler who intends to pass the obligation for universal service reports and payments on to a reseller shall obtain written certification that the reseller will do so. Telecommunications Reporting Worksheet. FCC Form 499-A, Subsection C.1. In the absence of such certification, the wholesaler is required to report such revenues as "end user revenues", and pay the resulting universal service liability. Here the parties recognized that QAI, as recipient of revenues, would obtain no such certification and instead would report the revenues in question as its own end user revenues, paying the resulting universal service charges.

Disallowing such an agreement and practice, as has been done by USAC and the Wireline Competition Bureau, is unfair to the Applicants, who followed the rules, and contrary to the concern expressed by the Commission in the First Report and Order that double payment of universal service contributions is not a goal of the system and is to be avoided. USAC and the Wireline Competition Bureau both tend to characterize the parties' arrangement as an attempt to shift responsibility from the Applicants to some third party, when in fact the rules and Instructions clearly place reporting and payment responsibility on the wholesale carrier unless and until it confirms with retailers that they will discharge these obligations. Instead, the parties

in the present case agreed QAI would retain those obligations in the same manner as it retained revenues from end user customers.

This arrangement was strained at a point when QAI became involved in a dispute with its underlying carrier, Sprint, and QAI requested execution of "Universal Connectivity Charge Exemption Certification" forms from each carrier. Exhibit F to Petitions and Declarations, Exhibit K. By their exchange of correspondence shown in Exhibit F the parties, **QAI** and Applicants, in effect ratified and confirmed their existing arrangement by not agreeing that it be changed. In its March 26, 2001 letter QAI acknowledged that without a change in the agreements it, QAI, would report the end user revenue as its own. While the alternative approach that was rejected might have been attractive to QAI, it would not have reflected reality in that under the parties' agreements, QAI billed for services and received all end user revenues, reporting revenues and paying universal service contributions. Each Applicant filed its own 2001 Form 499-A disclosing that it received no end user revenues in 2000. Exhibit H. Presumably QAI followed through on the representation in Exhibit F that it would report the end user revenues on its own 2001 Form 499-A.

The billings from the Universal Service Administrative Company to each of the Applicants are not based on 499-A forms filed by the Applicants. While insisting that each carrier must file its own report, the Universal Service Administrative Company rejected each carriers' 2001 499-A form with a letter dated September 12, 2001. See Exhibit B to Petitions. The letter simultaneously instructs each carrier to file its own 499-A form (and be directly responsible for payment of resulting universal service fund charges) but rejects the 499-A forms tiled by each carrier. The Universal Service Administrative Company has authority, under relevant rules, to examine and to audit the records of carriers filing 499 forms (e.g. 47 CFR

§54.707) but it has not been granted the authority to arbitrarily reject 499 forms submitted by carriers or to substitute its own version of what USAC thinks the 499 forms should say. That is exactly what has happened in this case.

47 CFR § 54.711(a) in effect at the time of the reports provided that “...the Commission or the Administrator may verify any information...at the discretion of the Commission.” Such authority to verify information could not have been intended by the Commission to grant the Administrator the extraordinary power to reject filings and substitute USAC’s choice of numbers, as stated in paragraph 21 of the Order. It adds nothing to state in conclusory fashion in paragraph 22 of the Order that “Petitioners failed to report their revenues...”. The Order implicitly but not expressly also ratifies USAC’s adoption of its own revenue numbers in place of the Applicants’

On appeal to USAC, (Exhibit I to Petitions), petitioners challenged USAC’s authority to reject 499 reports, as opposed to investigating or auditing them. The USAC Administrator’s Decision (Exhibit A to Petitions) reiterates that each carrier must file its own 499 reports, noted that USAC had received and “returned” the petitioners’ initial 499 reports, stated that it would be improper for **USAC** to rely on any third party 499 reports and then denied the appeal because “USAC has determined that Appellant’s revised Forms 499-A reporting 2000 revenue were inaccurately submitted.” The only basis offered for this conclusion appears in the same paragraph—that Applicants’ reports for unspecified periods **after** 2000 reported interstate revenues.

The Petitions were decided under the broad delegation to the Wireline Competition Bureau of review power contained in 47 CFR 54.722 (a). That rule includes an exception for requests for review “that raise novel questions of fact, law or policy”, which are instead to be

considered by the full Commission. Apparently the Petitions presented a novel question: whether, in light of (a) the reasoning which lead to the Commission's presumption of imposition of universal service charges on the carrier that bills for services and so receives payment from the customer and (b) the clear directive in the 499 Instructions that a wholesaler which does not verily reporting and payment of such charges by a reseller is responsible for such reporting and payment, parties may agree that the wholesaler will bill, collect and report end user revenues and pay resulting universal service charges, relieving the retailer that does not bill or collect such funds from these responsibilities. (Or, assuming every carrier must file its own 499-A report, as happened in this case, may the Applicant carriers report the revenues each actually had in 2000, subject to review and audit by USAC).

III REQUEST FOR STAY

Applicants respectfully request that the Commission direct the Universal Service Administrative Company to refrain from initiating or pursuing efforts to collect the sums in dispute as described herein pending further Commission Order and, if such Order be a denial of Applicants' requested relief, further staying such collection efforts until the conclusion of judicial review or the lapse of time for seeking such review, whichever is sooner.

Dated: April 10, 2007

Respectfully submitted,

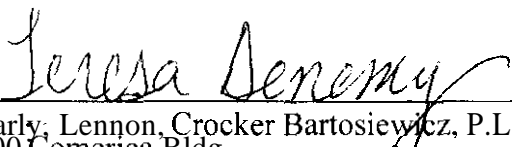

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CERTIFICATE OF SERVICE

4 copy of the foregoing Request for Stay was served upon the Universal Service Administrative Company this 10th day of April via Federal Express delivery and United States mail, at the following address.

Universal Service Administrative Company
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